IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)
THURSDAY, THE SEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

HON'BLE SMT JUSTICE T.MEENA KUMARI

WRIT PETITION NO : 7454 of 1995

Between:

1. Nimmakayala BulliSuranna @ ?Suranna s/o. Vasantha Rayudu
2. Nimmakayala Veerraju, s/o. s/o. Vasantha Rayudu
3. Nimmakayala Subbarao
4. Nimmakayala Ammiraju
5. Nimmakayala Adinarayana Murthy
6. Nimmakayala Chandra Rao
7. Nimmakayala Boorayya, s/o. Narayana Murthy

(7th petitioner is the LR of the deceased first petitioner)

All are residents of Andrangi, Kakinada DMC, E G District.

..... PETITIONERS

AND

1. The III Additional District Judge, Kakinada
2. The Special Officer (Prl.District Munsif Court,)Kakinada , E G Dist.
3. Pampana Venkata Swamy, s/o. Venkanna
4. Pampana Sreeramulu, s/o. Venkanna

(respondents 3 & 4 are residents at Andrangi, Kakinada DMC)

5. Pabbineedi Vasantharayudu, S/o. Durgarao , r/at Kurada Mamidada, Kakinada DMC

6. Bonda Nageswararao, s/o. Venkatarao, Kolanka, Kakinada DMC.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the

circumstances stated in the affidavit filed herein the High Court may be pleased to call for the records relating and leading to the order of the 1st respondent dt.24-10-1994 in ATA No.18/89 on his file confirming the order of the 2nd respondent dt 9-3-1989 in ATC No.92/81 on his file and quash the same by issue of writ of certiorari or other appropriate writ order or direction under Art.226 of the Constitution of India and

Counsel for the Petitioner: MR.M.S.R.SUBRAHMANYAM

Counsel for the Respondents No. 1&2 : G.P. for Revenue (Not present)

Counsel for the Respondent No.3&4: MR.V.L.N.GOPALA KRISHNA MURTHY (Not present))

Counsel for the Respondent Nos.5&6 : None appeared

The Court made the following :

ORDER:

Questioning the order of the first respondent dt.24-10-1994 in ATA No.18/89 confirming the order of the second respondent dt. 9.3.1989 in ATC No.92/81, the present writ petition is filed seeking to quash the same.

The brief facts that led to filing of the instant writ petition are as follows:

Petitioners, who are the landlords, filed ATC No.92/91 before the 2nd respondent against their tenants who are the respondents 3 & 4 herein for eviction on the ground of default in paying the maktha for the years 1974-75 and 1975-'76. Though oral and documentary evidence was adduced on their behalf, the 2nd respondent dismissed the ATC on the ground of non-joinder of necessary parties. Aggrieved thereby, they filed an appeal before the 1st respondent and the same was also dismissed through the impugned order while confirming the order of the 2nd respondent. Hence, the writ petition.

None appeared for the respondents and no counter is filed.

Heard the learned counsel for the petitioners.

Perused the averments and material available on record including the order impugned. The main grievance of the petitioners before the respondents 1 & 2 is that since the respondents 3&4 herein being their tenants committed default in paying the maktha for the years 1974-'75 & 1975-'76, they filed the ATC. The said tenancy case was contested by the respondents 3 & 4 contending that they took the land on lease from the father of the petitioners and after his death, disputes rose between the

petitioners and their sisters and that different parties served notices on them demanding the maktha and as such they fell in dilemma and hence they did not pay the maktha for those years. The Prl.District Munsif & Special Officer, Kakinada, after going into merits of the case, found that one of the petitioners sold away his undivided share in the property to the respondents-tenants under Ex.B3 & B4, that the other parties who are claiming right over the property were not added as parties to the petition and hence it came to the conclusion that the petition is bad for non joinder of parties as they have not partitioned their properties among themselves and dismissed the same. In the order under impugned, the first respondent also discussed the matter at length and found that the respondents-tenants did not commit any default in payment of rents and dismissed the appeal while confirming the findings of the Special Officer.

From a perusal of the impugned order, it would clearly go to show that the respondents-tenants did not commit any default in payment of maktha, and hence the Courts below rightly dismissed the petition. In view of the above, as both the Courts below have come to the conclusion basing on the evidence that there is no willful default, I do not find any reason to interfere with the impugned order.

Accordingly, the Writ Petition is dismissed.

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T. MEENA KUMARI, J

Dt 07-04-2005

Kvrk

To

1. The III Additional District Judge, Kakinada
2. The Special Officer (Prl. District Munsif Court) Kakinada , E G Dist.
3. Two CCs to GP for Revenue, High Court Buildings,

Hyderabad(OUT)

4. Two CD copies.

REGISTRAR

// TRUE COPY //

SECTION OFFICER

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HON'BLE SMT JUSTICE T.MEENA KUMARI

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07th April 2005